

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	CR. No. 3:05-381 (CMC)
)	
v.)	OPINION and ORDER
)	
Kevin Andrew Savage,)	
)	
Defendant.)	
_____)	

This matter is before the court on Defendant's motion to correct sentence under 28 U.S.C. § 2255, arguing that in light of the Supreme Court's holding in *Johnson v. United States*, __ U.S. __, 135 S.Ct. 2551 (2015), Defendant is no longer an armed career criminal and should be resentenced. ECF No. 38. The Government filed a Motion to Dismiss, citing the concurrent sentence doctrine and also arguing Defendant had three qualifying predicate convictions for ACCA status.¹ ECF No. 40. On June 30, 2016, Defendant filed a response in opposition to the Government's motion to dismiss. ECF No. 41. On September 21, 2018, the court ordered the parties to confer and determine whether a resolution could be reached or further briefing was necessary. ECF No. 42. In their response to the court, the parties agreed to "ask the court to grant Mr. Savage's 2255 as to Count 1" and "[i]mpose a Time Served sentence on that Count, followed

¹ The Government argued Defendant's second degree burglary conviction qualified as a predicate under the enumerated clause. This argument is foreclosed by *Mathis v. United States*, 579 U.S. __, 136 S.Ct. 2243 (2016). In addition, the Government argued Defendant in fact had two prior strong arm robbery convictions, even though the PSR only listed one. Under *United States v. Hodge*, __ F.3d __, 2018 WL 3999898, at *5-6 (4th Cir. Aug. 22, 2018), the unlisted conviction cannot be used to preserve the ACCA enhancement.

by a 3 year term of Supervised Release (concurrent to the 8 year term from Count 2).” *See* attached Exhibit 1.

The court agrees, based on *Mathis* and the recently decided *Hodge*, Defendant does not have the necessary three predicate convictions to qualify as an Armed Career Criminal. Therefore, the court **grants** the motion for relief under 28 U.S.C. § 2255.² The Judgment Order as to Kevin Andrew Savage in CR 3:05-381 filed February 3, 2006, (ECF No. 30) is hereby **vacated**, and a sentence of Time Served is imposed on Count 1, to be followed by a three year term of supervised release, to run concurrently with the eight year term imposed on Count 2. The sentence imposed on Count 2 remains unchanged. The Government’s motion to dismiss (ECF No. 41) is moot.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 27, 2018

² Defendant is no longer in custody and is currently on Supervised Release. Defense counsel has notified the court he wishes “the above resolution” to be put in place “without the need for a hearing.” *See* attached Exhibit 1.